

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE AGRICULTURAL LABOR RELATIONS
BOARD'S ADMINISTRATION OF THE
AGRICULTURAL LABOR RELATIONS ACT**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-466

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AGRICULTURAL LABOR RELATIONS ACT

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Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Agricultural Labor Relations Board's administration of the Agricultural Labor Relations Act.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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SUMMARY

This report provides information on the Agricultural Labor Relations Board's (ALRB) administration of the Agricultural Labor Relations Act (act). The ALRB, whose authority is shared by a general counsel and a five-member board, is empowered to adjudicate charges of unfair labor practices filed against employers and labor organizations, to hold secret ballot elections and certify election results, and to make rules necessary to carry out the provisions of the act. During fiscal years 1975-76 through 1983-84, the ALRB received and processed 8,545 charges alleging unfair labor practices; it handled 1,377 petitions for representation elections to certify unions and 56 petitions to decertify unions. In reviewing these separate aspects of the ALRB's administration of the Agricultural Labor Relations Act, we discovered that the ALRB has not adequately documented compliance with the board's decisions. However, the general counsel has taken steps to remedy this problem. Also during this period, three members of the five-member board initiated a legal action against the general counsel. The board petitioned the Sacramento Superior Court to prevent the general counsel from allowing an employer's agent access to certain ALRB documents. The superior court denied the board's petition.

Charges of Unfair Labor Practice

During fiscal years 1975-76 through 1983-84, agricultural employees, labor organizations, or employers filed with the ALRB 8,545 charges alleging unfair labor practices. Through the end of fiscal year 1983-84, the ALRB's regional staffs completed investigations and made initial dispositions of 7,500 charges; 974 charges were still in various stages of investigation, and the ALRB could not determine the disposition of 71 other charges. During the period of our review, charges against employers averaged 833 per year, and charges against labor organizations averaged 117 per year.

Of the 7,500 charges that the ALRB investigated, the ALRB dismissed 2,891 (38.6 percent), the charging parties withdrew 1,428 (19.0 percent), and 264 charges were settled (3.5 percent). The ALRB determined that 2,917 charges (38.9 percent) were probable violations of the act, and the ALRB incorporated these charges into complaints. In general, the percentage of charges incorporated into complaints against both employers and labor organizations has declined each year.

In total, the ALRB issued 1,134 complaints incorporating 2,917 charges through fiscal year 1983-84. The ALRB dismissed 32 complaints, 94 complaints were withdrawn, the ALRB scheduled hearings for 792 complaints before administrative law judges, and 207 complaints were settled. Hearings were still pending for the remaining 9 complaints.

Of the 792 complaints scheduled for hearings, 243 complaints were settled after the hearings had begun; hearings were in progress for 34 complaints; 9 hearings were pending; and administrative law judges issued 506 decisions. However, the charged parties appealed 442 administrative law judge decisions to the ALRB's five-member adjudication board. The board upheld 335 of the administrative law judge decisions, dismissed 70 of the decisions, and had not reviewed the remaining 37 decisions as of June 30, 1984. The charged parties further appealed to the courts 224 of the 335 board decisions that affirmed a violation.

The courts of appeal ruled on 153 of the appealed board decisions, and the remaining 71 were pending an appellate decision. The court upheld 119 board decisions, modified 19 decisions, and reversed 15 board decisions. However, the charged parties further appealed 25 courts of appeal decisions to the California State Supreme Court, which upheld 6 of the board decisions, modified 3 decisions, and reversed one decision; 15 decisions were pending at the end of fiscal year 1983-84.

In addition to resolving agricultural labor disputes, the ALRB is responsible for ensuring that parties comply with board decisions. However, the ALRB is not adequately documenting compliance with board decisions. The ALRB has not enforced its own policy to document compliance reviews to ensure that violators of the act comply with all the specifications of board decisions as required by the act. However, the general counsel has begun to solve this problem. He is identifying board decisions that require compliance reviews and implementing a computerized tracking system to monitor compliance with board decisions. Representatives of the general counsel and the board are jointly preparing a new compliance manual for the regional offices. In order to assess this new system for enforcing the board's decisions, we recommend that the ALRB present the results of its compliance reviews in its annual report to the Legislature.

Representation Elections

The ALRB is responsible for conducting secret ballot elections in which agricultural employees can choose collective bargaining representatives. The ALRB received 1,433 representation election petitions during the review period: 1,377 of the petitions requested certification of a union to represent employees, and 56 petitions requested decertification. The ALRB conducted 1,010 elections that included 1,014 petitions, and it dismissed 158 election petitions that did not comply with election requirements. The petitioners withdrew 260 election petitions, and the ALRB suspended one petition for an election.

The General Counsel's Disclosure of Information Under the Public Records Act

On April 3, 1984, the ALRB's general counsel received a written request from an agricultural employer's legal representative to review specific investigative files, pursuant to the California Public

Records Act. The general counsel allowed the representative access to the files under the Public Records Act. Three members of the five-member board later contended that the files contained privileged information and, in November 1984, filed petitions with the Sacramento Superior Court to prevent the general counsel from allowing the representative access to the files. The general counsel stated that this was the first time the board took court action to prevent him from disclosing information. On December 3, 1984, the superior court issued a ruling on the case. The superior court ruled, among other things, that statutes give the general counsel the authority to determine whether investigative documents are privileged or confidential and denied the board's petitions. The general counsel then filed a motion for clarification of the ruling. On February 6, 1985, the superior court issued another ruling to clarify the first ruling. This ruling also denied the board's petitions. In addition, the superior court ruled that the general counsel must decide whether his allowing the employer's representative access to the files will influence the ALRB's appellate court litigation with this employer.

INTRODUCTION

The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act (act) took effect in August 1975. This act sets forth California's agricultural labor relations policy and defines the rights, powers, and duties of agricultural employers, employees, and labor organizations that represent agricultural employees. State policy seeks to ensure peace in the agricultural fields by guaranteeing justice for all agricultural employees and by guaranteeing stability in labor relations. This labor relations policy also protects the rights of agricultural employees to associate and organize, and it permits employees to have representatives of their choice negotiate the terms and conditions of their employment through collective bargaining that is free of interference, restraint, and coercion by employers.

The act empowers the Agricultural Labor Relations Board (ALRB) to investigate and adjudicate charges of unfair labor practice filed against agricultural employers and labor organizations. The act also empowers the ALRB to hold secret ballot elections in which agricultural employees can choose their labor representatives, to adjudicate cases involving election misconduct, and to certify the result of elections. Finally, the ALRB is empowered to make rules and regulations to carry out the provisions of the act.

The ALRB's authority is divided between a five-member board and a general counsel.* The board acts primarily as a quasi-judicial body in deciding cases based on the review of formal records. The general counsel investigates charges of unfair labor practice--that is, violations of the act--filed by employers, labor organizations, or employees; issues and prosecutes formal complaints in cases of unfair labor practice. The regional directors conduct representation elections on behalf of the board. The general counsel also supervises the staffs in the four regional offices and the ALRB's Sacramento staff, excluding the board's administrative law judges, its legal staff, the executive secretary's staff, and the solicitor's staff.

The ALRB processes those charges of unfair labor practice and petitions for employee elections that are filed in the regional and field offices. Regional offices, which include a regional director and staff, are located in Delano, El Centro, Oxnard, and Salinas. The ALRB's regional and field offices receive, investigate, and process all charges of unfair labor practice. After a charge of unfair labor practice is filed, the regional office staff investigates the charge and determines its disposition. If the evidence is not sufficient to substantiate the charge of an unfair labor practice, the regional office will dismiss the charge. However, if the evidence supports the charge, the regional office will issue a formal complaint, and the ALRB

*Throughout this report, "ALRB" refers to the agency, and "board" refers to the five-member adjudicatory body.

will schedule a hearing on the case before an ALRB administrative law judge. After a charge has been filed and until the board issues a decision, the parties in dispute may voluntarily agree to remedy (settle) a charge of an unfair labor practice. If the parties do settle, the regional office may dismiss the charge, or the party filing the charge (charging party) may withdraw the charge. The ALRB's regional offices receive, process, and investigate all petitions for representation elections. They also arrange and conduct elections. The executive secretary and the board certify the results of the elections, and investigate allegations of misconduct during the elections.

The board's administrative law judges conduct formal hearings for cases of unfair labor practice and issue decisions that include findings of fact, conclusions of law, and recommendations for resolving the issues. Any litigant may appeal an administrative law judge's decision to the board. If no appeals are filed, the board adopts the decision. Although the ALRB has no independent statutory power to enforce its decisions, it may seek enforcement in the superior courts. Litigants in ALRB cases may also seek judicial review of board decisions in the courts of appeal. However, when investigative hearings are held to resolve objections or exceptions to representation elections, the hearing examiner's decision may be appealed only to the board; there is no opportunity for court review.

The ALRB's programs are funded from the State's General Fund. The 1985-86 Governor's Budget shows that ALRB expenditures were \$7.37 million for fiscal year 1983-84 and estimates expenditures of \$8.13 million for fiscal year 1984-85.

SCOPE AND METHODOLOGY

We asked the ALRB to provide summary data of charges of unfair labor practice and of petitions for representation elections filed with the ALRB for fiscal years 1975-76 through 1983-84. We selected a random sample of these charges and petitions to test the reliability of the ALRB's data. We also used this sample to determine the specific nature of charges of unfair labor practice, such as discrimination or coercion. Although there were minor discrepancies, which we reconciled with the ALRB staff, we found the ALRB's data to be reliable.

During our review, we interviewed ALRB staff to identify policies and procedures that they use in compiling statistical data on the activities at the regional offices. In addition, we reviewed the case files of the ALRB, and we reviewed statistical records on the disposition of charges of unfair labor practice and on petitions for representation elections. Further, we analyzed the data to determine if there were trends in the ALRB's disposition of charges of unfair labor practice and petitions for representation elections. Finally, we reviewed ALRB and regional office case files to determine whether the ALRB monitors compliance with the board's orders.

We also investigated a controversy that arose when the general counsel released documents to representatives of an agricultural employer. We interviewed the general counsel and members of the board to determine the circumstances leading to the general counsel's release of the documents. Additionally, we reviewed declarations and petitions that the general counsel and the board filed with the Sacramento Superior Court in the board's request for an injunction against the release of documents by the general counsel. Finally, we reviewed the superior court decisions on the issues of the case.

Our purpose throughout this audit was to gather and present the ALRB's data that reflect its administration of the Agricultural Labor Relations Act. In some cases, we point out trends that seem to be evident from these data. However, our intent in this report is informational; our purpose is not to offer these data as an interpretation of the ALRB's policy toward agricultural employers or labor organizations.

AUDIT RESULTS

I

THE AGRICULTURAL LABOR RELATIONS BOARD'S ADMINISTRATION OF THE AGRICULTURAL LABOR RELATIONS ACT

From August 28, 1975, when it was established, through June 30, 1984 (fiscal years 1975-76 through 1983-84), the Agricultural Labor Relations Board (ALRB) received and processed 8,545 charges alleging unfair labor practices by agricultural employees, labor organizations, or employers. For 7,500 of these charges, the regional offices completed investigations and made initial dispositions, such as dismissing the charge or issuing a complaint. In some instances, the parties filing the charges withdrew the charges or settled the charge of unfair labor practice with the charged party. At the end of fiscal year 1983-84, the regional offices had accumulated a backlog of 974 charges that were in various stages of investigation. The ALRB was unable to determine from their summary documents the disposition of 71 other charges. We did not request the ALRB to research individual files in its archives to determine the disposition of these charges.

In reviewing the charges and their dispositions, we discovered that the ALRB does not document compliance with board decisions adequately. Although the ALRB developed compliance procedures for the regional offices to follow, the regional offices are not consistently documenting that parties have satisfactorily complied with board

decisions. However, the ALRB has taken action to improve its monitoring of compliance. For example, the ALRB is implementing a computerized tracking system for monitoring compliance and representatives of the general counsel and the board are jointly developing a new compliance manual for staff in the regional offices.

During the same review period, the ALRB received and processed 1,433 representation election petitions; 1,377 of the petitions filed were for certification, and 56 petitions were for decertification. The ALRB conducted 1,010 elections and dismissed 158 petitions, and petitioners withdrew 260 petitions. Additionally, the ALRB consolidated 4 petitions with other elections, and one election was not conducted.

Charges of Unfair Labor Practice

The ALRB is responsible for processing allegations (charges) of unfair labor practice filed by agricultural employees, labor organizations, or employers. California Labor Code Section 1140.2 protects the rights of agricultural employees to associate and organize, and it permits employees to have representatives of their choice to negotiate the terms and conditions of their employment through collective bargaining that is free of interference, restraint, and coercion by employers. Further, the general counsel, through the regional staffs, has the authority to investigate and ultimately take to trial agricultural employers or labor organizations that engage in actions involving unfair labor practice.

During fiscal years 1975-76 through 1983-84, as Table 1 below shows, agricultural employees, labor organizations, or employers filed 8,545 charges with the ALRB. Of these charges, 7,495 (87.7 percent) were filed against employers, and 1,050 (12.3 percent) were filed against labor organizations.

TABLE 1
CHARGES OF UNFAIR LABOR PRACTICE FILED AGAINST
EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84

	NUMBER OF CHARGES FILED									Total
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	
Against Employers	836	645	659	675	1,134	848	762	1,106	830	7,495
Against Labor Organizations	<u>88</u>	<u>123</u>	<u>77</u>	<u>143</u>	<u>178</u>	<u>90</u>	<u>168</u>	<u>128</u>	<u>55</u>	<u>1,050</u>
Total	<u>924</u>	<u>768</u>	<u>736</u>	<u>818</u>	<u>1,312</u>	<u>938</u>	<u>930</u>	<u>1,234</u>	<u>885</u>	<u>8,545</u>

	PERCENT OF CHARGES FILED									Total
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	
Against Employers	90.48	83.98	89.54	82.52	86.43	90.41	81.94	89.63	93.78	87.71
Against Labor Organizations	<u>9.52</u>	<u>16.02</u>	<u>10.46</u>	<u>17.48</u>	<u>13.57</u>	<u>9.59</u>	<u>18.06</u>	<u>10.37</u>	<u>6.22</u>	<u>12.29</u>
Total	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

Table 1 also shows that the number of charges filed against employers increased significantly in fiscal years 1979-80 and 1982-83 and that 178 charges were filed against labor organizations in fiscal year 1979-80--the largest number of charges filed against labor organizations in any one year. The general counsel interpreted the upsurge in charges filed in fiscal year 1979-80 partly as a consequence of a union strike against the lettuce growers in the Imperial Valley.

He pointed out, however, that the ALRB is a reactive agency and does not control the rate at which charges are filed and that it is, therefore, difficult to explain each variation in the rate.

In each of the nine fiscal years, more than 81 percent of the charges of unfair labor practice were filed against employers, averaging 833 charges per year. During the same period, the ALRB received annually an average of 117 charges against labor organizations. As Table 1 shows, the number of charges filed against labor organizations has never exceeded 18.1 percent of the total charges filed with the ALRB each year.

The charges against employers and labor organizations can be placed into several categories. For example, in our review of charges of unfair labor practice filed against employers, we found charges that alleged coercion of employees for union activities, charges that alleged discrimination against employees for union activities, charges that alleged employers either refused to bargain or were bargaining in bad faith, and charges that alleged that employers denied union organizers access to their property.

We also reviewed charges against labor organizations and found that these charges included allegations that unions used coercion and threats against workers, that unions engaged in bad faith bargaining, that unions engaged in illegal picketing, and that unions failed to represent employees.

After receiving a charge, the ALRB's regional staffs investigate the charge to determine its disposition. If there is insufficient evidence to substantiate an unfair labor practice, either the regional director will dismiss the charge or the charging party will voluntarily withdraw it. If there is evidence of an unfair labor practice, the regional director will issue a complaint for litigation before an administrative law judge. A complaint is a legal document that states specifically the improper conduct that is alleged to be an unfair labor practice.

The parties to an alleged unfair labor practice may also voluntarily agree to settle the issues. A settlement, which is a mutual agreement by the parties to resolve the issues of an unfair labor practice, may be entered into at any time between the filing of a charge and the issuing of a decision by the board.

ALRB's Disposition of Charges Filed

During fiscal years 1975-76 through 1983-84, the regional offices completed investigations and made initial dispositions of 7,500 of the 8,545 charges filed. At the end of fiscal year 1983-84, the ALRB had a backlog of 974 charges that were in various stages of investigation and an additional 71 charges for which the ALRB could not determine the disposition. Table 2 shows the disposition of the charges that the ALRB received and investigated.

TABLE 2
DISPOSITION OF CHARGES OF UNFAIR LABOR PRACTICE
FILED AGAINST EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84*

	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>	<u>Percent</u>
Charges Dismissed	123	331	278	226	276	413	491	404	349	2,891	38.55
Charges Withdrawn	89	98	162	125	307	171	192	189	95	1,428	19.04
Charges Settled	12	23	37	22	18	15	12	42	83	264	3.52
Charges Into Complaint	<u>263</u>	<u>365</u>	<u>332</u>	<u>349</u>	<u>439</u>	<u>438</u>	<u>367</u>	<u>199</u>	<u>165</u>	<u>2,917</u>	<u>38.89</u>
Total	<u>487</u>	<u>817</u>	<u>809</u>	<u>722</u>	<u>1,040</u>	<u>1,037</u>	<u>1,062</u>	<u>834</u>	<u>692</u>	<u>7,500</u>	<u>100.00</u>

*These data exclude the backlog of 974 charges that the regional offices accumulated at the end of fiscal year 1983-84 and 71 charges whose disposition the ALRB could not determine.

Table 2 shows that between fiscal years 1975-76 and 1983-84, the ALRB dismissed almost 39 percent of the charges, and the parties filing charges withdrew approximately 19 percent of the charges they filed. Relatively few (3.5 percent) of the parties filing charges settled their issues; however, in the last two fiscal years, there has been a substantial increase in the number of settlements. Forty-seven percent of all settlements occurred in fiscal years 1982-83 and 1983-84. Finally, approximately 39 percent of the charges filed were incorporated into complaints.

Of the 7,500 charges of unfair labor practice filed, 4,583 charges (61.1 percent) were resolved without litigation. In comparison, the National Labor Relations Board reported in fiscal year 1981 that more than 90 percent of the charges of unfair labor practice filed were resolved without litigation.

The following graph (Figure 1) shows the percentage of charges filed with the ALRB that were either incorporated into complaints or dismissed.

FIGURE 1

**CHARGES OF UNFAIR LABOR PRACTICE
DISMISSED OR INCORPORATED INTO COMPLAINTS
FISCAL YEARS 1975-76 THROUGH 1983-84**

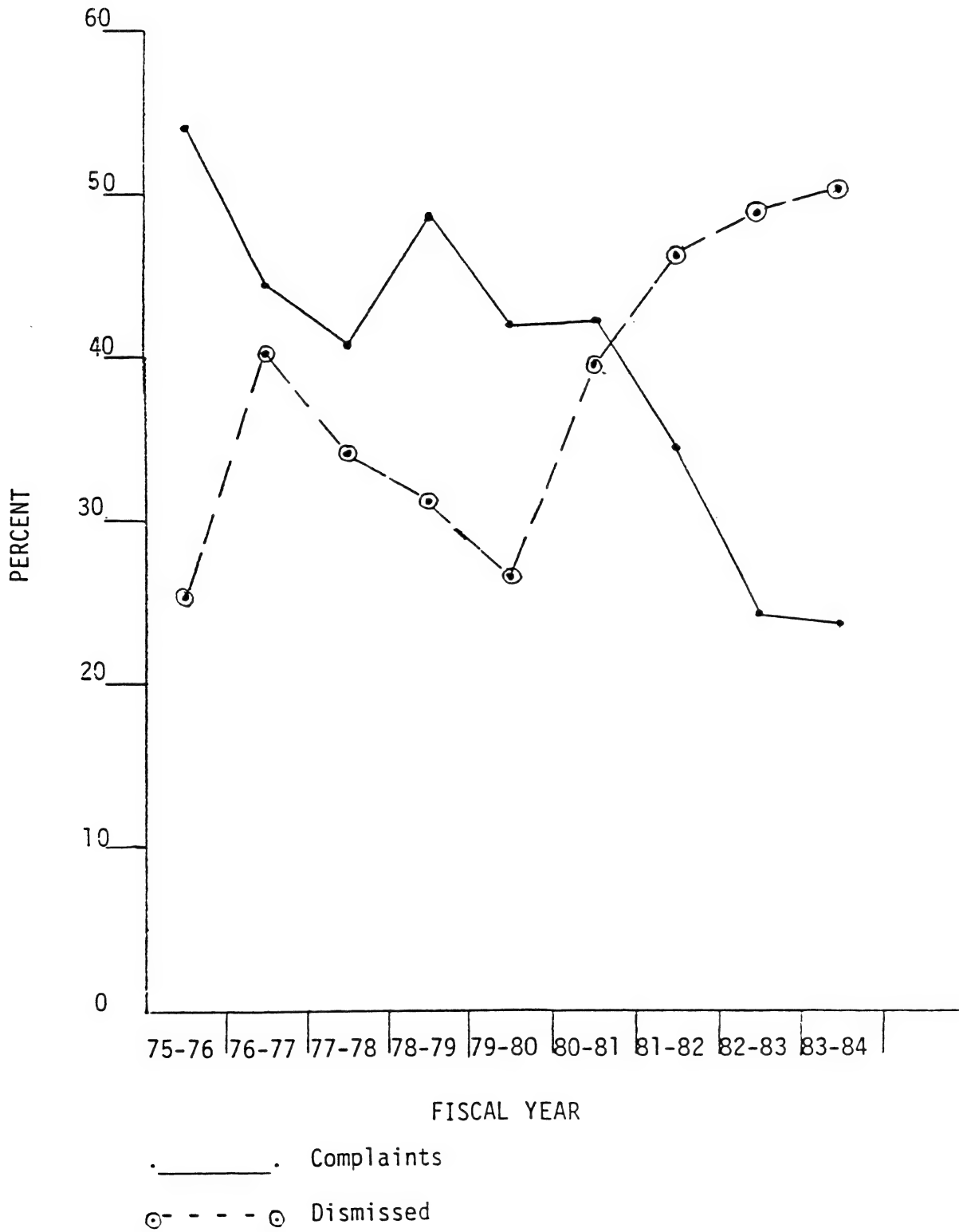


Figure 1 also shows that there has been a decline in the percentage of charges that have been incorporated annually into complaints, from 54 percent in fiscal year 1975-76 to 23.9 percent in fiscal year 1983-84. Further, Figure 1 shows that the percentage of charges dismissed decreased from fiscal year 1976-77 to fiscal year 1979-80; however, since then, the dismissal rate has nearly doubled, increasing from 26 percent in fiscal year 1979-80 to 51 percent in fiscal year 1983-84.

ALRB's Disposition of Complaints Issued

The Agricultural Labor Relations Act mandates the procedures for processing complaints against both employers and labor organizations. According to the act, the regional offices are to investigate each charge to determine if there is reasonable cause to substantiate it. The act also stipulates that the adjudication of complaints is to be based on the "preponderance" of written and oral testimony. In this section, we present the ALRB's data on the disposition of complaints issued against employers and labor organizations. However, we do not analyze these data as indicators of the ALRB's policy toward employers or labor organizations.

Table 3 on the next page shows that during the period of our review, 3,730 of the 6,488 charges (57.5 percent) filed against employers were resolved without ALRB litigation: 2,179 charges (33.6 percent) were dismissed; 1,302 charges (20.1 percent) were withdrawn; and 249 charges (3.8 percent) were settled. On the other hand, 2,758 charges (42.5 percent) were incorporated into complaints.

Table 3 also shows the ALRB's disposition of 1,012 charges of unfair labor practice filed against labor organizations. During the period of our review, 853 of the 1,012 charges (84.3 percent) filed against labor organizations were resolved without ALRB litigation: 712 charges (70.4 percent) were dismissed; 126 charges (12.4 percent) were withdrawn; and 15 charges (1.5 percent) were settled. At the same time, 159 charges (15.7 percent) were incorporated into complaints.

TABLE 3

**DISPOSITION OF CHARGES OF UNFAIR LABOR PRACTICE
FILED AGAINST EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84**

EMPLOYERS*											
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>	<u>Percent</u>
Charges Dismissed	67	245	222	158	160	339	359	315	314	2,179	33.59
Charges Withdrawn	82	84	152	103	280	163	171	178	89	1,302	20.07
Charges Settled	12	22	34	22	18	15	11	33	82	249	3.84
Charges Into Complaint	<u>246</u>	<u>346</u>	<u>324</u>	<u>296</u>	<u>405</u>	<u>430</u>	<u>353</u>	<u>194</u>	<u>164</u>	<u>2,758</u>	<u>42.50</u>
Total	<u>407</u>	<u>697</u>	<u>732</u>	<u>579</u>	<u>863</u>	<u>947</u>	<u>894</u>	<u>720</u>	<u>649</u>	<u>6,488</u>	<u>100.00</u>

*These data exclude the backlog of 950 charges that the regional offices accumulated at the end of fiscal year 1983-84 and 57 charges whose disposition the ALRB could not determine.

LABOR ORGANIZATIONS*											
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>	<u>Percent</u>
Charges Dismissed	56	86	56	68	116	74	132	89	35	712	70.36
Charges Withdrawn	7	14	10	22	27	8	21	11	6	126	12.45
Charges Settled	0	1	3	0	0	0	1	9	1	15	1.48
Charges Into Complaint	<u>17</u>	<u>19</u>	<u>8</u>	<u>53</u>	<u>34</u>	<u>8</u>	<u>14</u>	<u>5</u>	<u>1</u>	<u>159</u>	<u>15.71</u>
Total	<u>80</u>	<u>120</u>	<u>77</u>	<u>143</u>	<u>177</u>	<u>90</u>	<u>168</u>	<u>114</u>	<u>43</u>	<u>1,012</u>	<u>100.00</u>

*These data exclude the backlog of 24 charges that the regional offices accumulated at the end of fiscal year 1983-84 and 14 charges whose disposition the ALRB could not determine.

The ALRB may incorporate charges arising from the same facts and circumstances into one complaint. In one case, 48 employees individually filed charges alleging they were illegally discharged by their employer. These 48 charges were consolidated into one complaint. In another case, a single complaint comprised the 50 charges of employees who alleged that an employer threatened them with discharge because of their union activities.

After a regional director issues a complaint and before formal legal procedures are scheduled, a complaint may be resolved in three ways. First, the regional director may dismiss the complaint if, after further investigation, the regional director decides that there is not enough evidence to substantiate the charge of an unfair labor practice. Second, the charging party may voluntarily withdraw the charge. Third, complaints may be settled prior to a hearing. If the complaint is not resolved in any of these three ways, an administrative law judge decides the case in a public hearing.

During fiscal years 1975-76 through 1983-84, regional directors issued 1,134 complaints incorporating a total of 2,917 charges filed against employers and labor organizations. Table 4 on the next page shows that for the 1,134 complaints the ALRB issued, 333 were resolved without formal legal proceedings: regional directors dismissed 32 complaints; 94 complaints were withdrawn; and 207 complaints were settled. Public hearings were scheduled for 792 complaints. The remaining 9 complaints had not been scheduled for hearings at the end of fiscal year 1983-84.

TABLE 4
COMPLAINTS ISSUED AGAINST
EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84

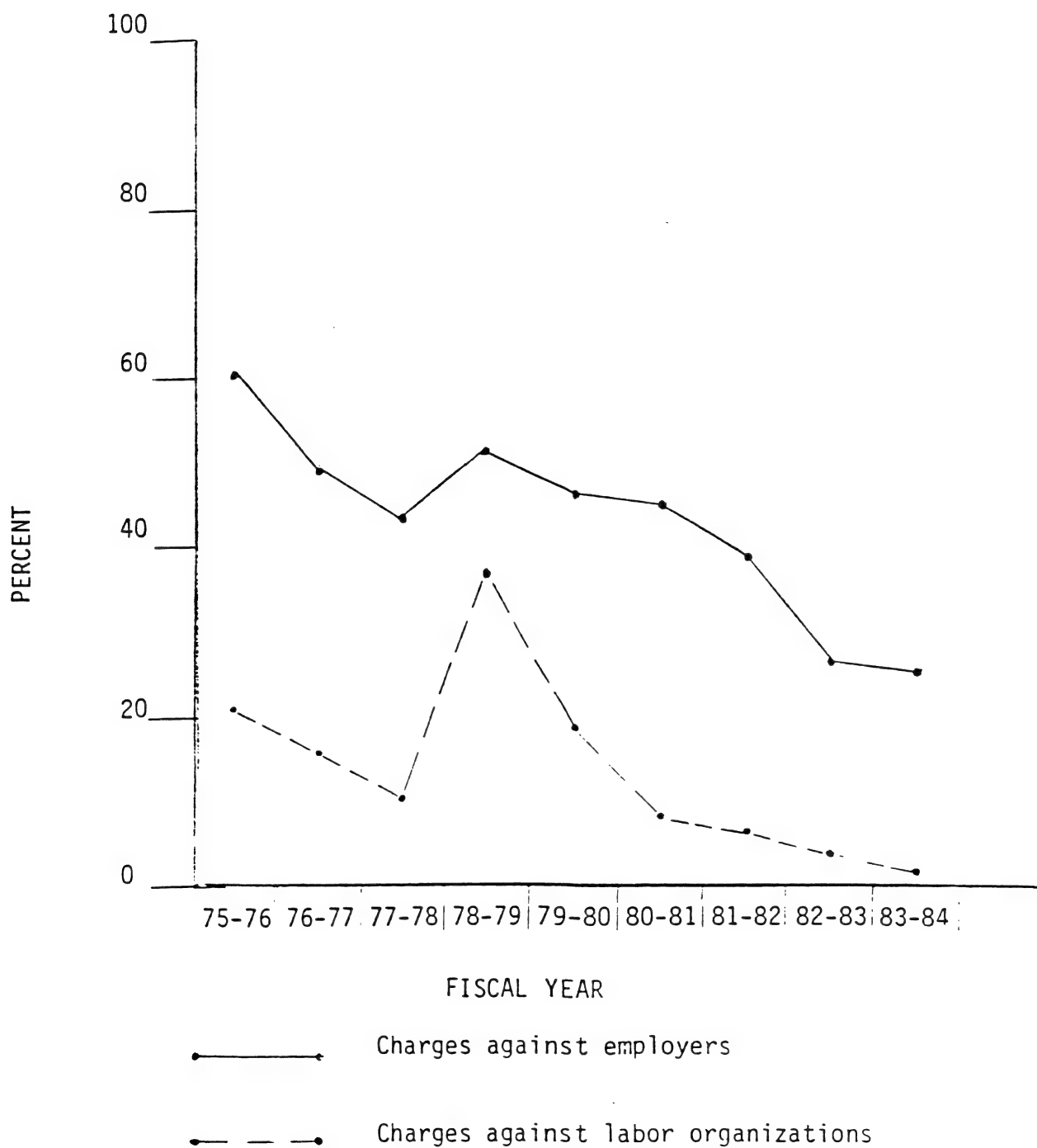
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>
Complaints Issued	150	156	115	161	160	105	137	85	65	1,134
Disposed of Before Hearing										
Complaints Dismissed	2	4	4	3	11	3	1	2	2	32
Complaints Withdrawn	3	14	7	6	16	10	13	14	11	94
Complaints Settled	10	35	36	23	15	22	28	16	22	207
Hearings Scheduled	52	139	97	78	94	87	90	110	45	792*

*This total does not include 9 complaints that had not been scheduled for hearings at the end of fiscal year 1983-84.

For the 1,134 complaints issued, regional offices incorporated 2,758 charges filed against employers into 1,060 complaints, and they incorporated 159 charges filed against labor organizations into 93 complaints; however, 19 of the complaints against labor organizations were consolidated with complaints against employers. Figure 2 on the next page shows that the percentage of charges against employers that the regional offices incorporated into complaints has decreased from 60.4 percent in fiscal year 1975-76 to 25.3 percent in fiscal year 1983-84. Similarly, the percentage of charges against labor organizations incorporated into complaints has decreased from 21.3 percent to 2.3 percent annually, except for fiscal year 1978-79, when the rate increased to 37.1 percent.

FIGURE 2

**PERCENT OF CHARGES INCORPORATED INTO COMPLAINTS
AGAINST EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84**



Finally, Table 5 shows the disposition of complaints issued against employers. Of the 1,060 complaints issued against employers, 24 were dismissed, 75 complaints were withdrawn, 197 were settled, and 755 complaints were scheduled for public hearings before administrative law judges. The remaining 6 complaints had not been scheduled for hearings at the end of fiscal year 1983-84.

Table 5 also shows the disposition of the 93 complaints issued against labor organizations. Nineteen of these were consolidated with complaints against employers. Of the remaining 74 complaints, 8 were dismissed, 16 were withdrawn, 10 were settled, and 37 complaints were scheduled for public hearings before administrative law judges. The remaining 3 complaints had not been scheduled for hearings at the end of fiscal year 1983-84.

TABLE 5

**DISPOSITION OF COMPLAINTS
ISSUED AGAINST EMPLOYERS AND LABOR ORGANIZATIONS
FISCAL YEARS 1975-76 THROUGH 1983-84**

	EMPLOYERS									
	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	Total
Complaints Issued	142	146	111	130	153	104	130	80	64	1,060
Disposed of Before Hearing										
Complaints Dismissed	2	3	4	2	8	1	1	2	1	24
Complaints Withdrawn	3	12	4	6	7	9	12	14	11	78
Complaints Settled	10	35	35	23	14	20	25	13	22	197
Hearings Scheduled	47	133	94	61	93	86	88	108	45	755*

*This total does not include 6 complaints that had not been scheduled for hearings at the end of fiscal year 1983-84.

	LABOR ORGANIZATIONS									
	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	Total
Complaints Issued*	15	13	4	33	13	2	7	5	1	93
Disposed of Before Hearing										
Complaints Dismissed	0	1	0	1	3	2	0	0	1	8
Complaints Withdrawn	0	2	3	0	9	1	1	0	0	16
Complaints Settled	0	0	1	0	1	2	3	3	0	10
Hearings Scheduled	5	6	3	17	1	1	2	2	0	37**

*These data include 19 complaints issued against labor organizations that were consolidated with complaints issued against employers. The disposition of these 19 complaints is reflected in the data above as complaints against employers.

**This total does not include 3 complaints that had not been scheduled for hearings at the end of fiscal year 1983-84.

Adjudication of Complaints

After a regional office has issued a formal complaint alleging an unfair labor practice, the general counsel schedules a public hearing. An administrative law judge presides over this hearing and

gives each party an opportunity to present evidence. After the close of the hearing, the administrative law judge renders a decision that either affirms or denies the occurrence of an unfair labor practice.

Of the 792 complaints that were scheduled for a public hearing before an administrative law judge, 243 cases were settled during the hearing, administrative law judges issued 506 decisions, and hearings were still in progress for 34 complaints. Hearings for 9 complaints had not been scheduled at the end of fiscal year 1983-84.

Once an administrative law judge issues a decision, a party may file exceptions or appeal the decision. If a party files an appeal, the board reviews the record of the administrative law judge's proceedings and issues a final decision. Parties appealed 442 of the 506 decisions that administrative law judges rendered. The board upheld, at least in part, 335 and dismissed 70 of the administrative law judge's decisions; 37 decisions were pending review at the end of fiscal year 1983-84.

After the board issues its final decision, parties to the ALRB cases may seek judicial review of board decisions in the courts of appeal. Of the 335 administrative law judge decisions that the board upheld, parties appealed 224 to the courts of appeal. At the end of fiscal year 1983-84, the courts of appeal had reviewed and issued decisions for 153 of the board decisions; 71 of the board decisions were still pending court decisions. Of the 153 decisions issued, the

district courts of appeal upheld the board's decision in 119 cases, modified the board's decision in 19 cases, and reversed the board's decision in 15 of the cases.

Parties appealed 25 of the board decisions to the California State Supreme Court. In its review of 10 of the board's decisions, the State Supreme Court upheld the board's decision in 6 cases, modified the board's decision in 3 cases, and reversed the board's decision in one case. The State Supreme Court's decisions for the remaining 15 board decisions appealed were pending at the end of fiscal year 1983-84.

Compliance With Board Decisions

Once the board has rendered a decision, it is the responsibility of the ALRB to see that violators of the Agricultural Labor Relations Act comply with all requirements of the decision. However, our review of the ALRB data revealed that the ALRB is not adequately following its own procedures for documenting compliance with board decisions. As a result, the ALRB cannot demonstrate that it has monitored compliance with the board's decisions.

California Labor Code Section 1160.8 gives the ALRB the authority to seek enforcement of and compliance with the board's decisions through the courts of appeal. By an agreement between the general counsel and the board, the general counsel is responsible for

ensuring that parties comply with board decisions. Therefore, under the direction of the general counsel, the regional offices are supposed to conduct compliance reviews and document compliance with board decisions. However, the regional offices are not properly documenting the results of the compliance reviews that they do conduct.

When we analyzed the ALRB's case files, we found that none of the case files contained complete documentation to show that the regional offices had conducted compliance reviews. As a result, the ALRB cannot demonstrate that violators of the act have complied with the board's decisions.

Furthermore, the ALRB is not following its written procedures for processing the financial settlements that are stipulated in the board's decisions. The ALRB's procedures require that all financial settlements be processed by its accounting office, except in certain circumstances. According to the deputy general counsel, exceptions apply in those cases involving one or two employees. However, we found instances in which the accounting office had no record of financial settlements because the regional offices had allowed employers to make settlement checks payable to individual employees and the regional offices had then delivered the checks to the employees. In one instance, a board decision required an employer to pay over \$120,000 to 26 employees for the loss of their wages. The regional office file showed that regional office staff delivered to the employees 26 individual checks issued by the employer. However, the ALRB's

accounting office had no record of this transaction. In June 1984, the ALRB clarified its policy for processing financial settlements and currently requires that all financial settlements be processed by its accounting office.

Because the ALRB has not adequately documented compliance with board decisions, the ALRB does not know whether violators of the act have complied with board decisions. Although the ALRB established uniform procedures in July 1979 requiring the regional offices to monitor and document compliance with adjudicated cases, the general counsel admits that the ALRB has not enforced these procedures. He has, however, taken action to correct these deficiencies. He appointed an acting compliance officer in November 1983 to identify all board decisions requiring compliance reviews by the regional offices. While that review was in process, the board provided the general counsel with a list of outstanding final board orders that required farmworkers be paid for losses they incurred as a result of violations of the act. The board requested a status report on these cases.

The general counsel is implementing a computerized tracking system to monitor compliance reviews. In addition, the representatives of the general counsel and the board are jointly developing a new compliance manual for regional offices; this manual will include procedures for monitoring and documenting compliance with board decisions. We recommend that the ALRB present the results of the compliance reviews in its annual report to the Legislature.

Representation Elections

Section 1152 of the California Labor Code states that agricultural employees have "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing...." To this end, the ALRB is mandated to conduct secret ballot elections that provide agricultural employees the opportunity to choose a collective bargaining representative.

Agricultural employees who want a representation election must file a representation election petition at one of the ALRB's regional offices. There are two types of petitions: petitions for representation certification and petitions for representation decertification. A petition for representation certification is filed by employees who want to elect a particular labor organization as their collective bargaining representative. A petition for representation decertification is filed if employees seek to remove the current labor organization as the employees' bargaining representative.

After a petition is filed with the ALRB, a regional director will conduct an election within seven days if the petition complies with the requirements in the act. For example, the director must determine that a sufficient number of employees have signed authorization cards stating that they want to have the ALRB conduct an election. If the petition does not comply with the requirements, the

regional director will dismiss the petition, or the party who submitted the petition may voluntarily withdraw the petition.

During fiscal years 1975-76 through 1983-84, the ALRB received and processed 1,433 representation election petitions: 1,377 of the petitions were filed by employees seeking to certify a union to represent them in collective bargaining, and 56 petitions were filed by employees seeking to remove or decertify a union as the employees' bargaining representative. As Table 6 below shows, of the 1,377 certification petitions, 604 (43.9 percent) petitions were filed in the ALRB's first year of operation, and 973 (70.7 percent) were filed within the first three years after the Legislature established the ALRB. The first of the 56 petitions for decertifications was filed in fiscal year 1978-79.

TABLE 6
REPRESENTATION ELECTION PETITIONS FILED
FISCAL YEARS 1975-76 THROUGH 1983-84

	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>	<u>Percent</u>
Certification	604	221	148	80	57	133	26	63	45	1,377	96.09
Decertification	<u>0</u>	<u>0</u>	<u>0</u>	<u>17</u>	<u>6</u>	<u>7</u>	<u>12</u>	<u>6</u>	<u>8</u>	<u>56</u>	<u>3.91</u>
Total	<u>604</u>	<u>221</u>	<u>148</u>	<u>97</u>	<u>63</u>	<u>140</u>	<u>38</u>	<u>69</u>	<u>53</u>	<u>1,433</u>	<u>100.00</u>

Table 7 on the next page shows the disposition of election petitions filed during each year of our review period. Of the 1,377 petitions filed, 158 were dismissed by the ALRB, 260 were withdrawn by the petitioners, and 1,010 resulted in elections.

TABLE 7

**DISPOSITION OF REPRESENTATION ELECTION PETITIONS FILED
FISCAL YEARS 1975-76 THROUGH 1983-84**

NUMBER OF PETITIONS PROCESSED										
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>
Dismissed	62	11	8	17	13	32	4	7	4	158
Withdrawn	114	20	18	10	14	43	8	24	9	260
Elections Conducted	<u>423</u>	<u>190</u>	<u>122</u>	<u>70</u>	<u>36</u>	<u>65</u>	<u>26</u>	<u>38</u>	<u>40</u>	<u>1,010</u>
Total	<u>599*</u>	<u>221</u>	<u>148</u>	<u>97</u>	<u>63</u>	<u>140</u>	<u>38</u>	<u>69</u>	<u>53</u>	<u>1,428*</u>

*Four petitions were consolidated into one election, and one election was not conducted.

PERCENT OF PETITIONS PROCESSED										
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>Total</u>
Dismissed	10.35	4.98	5.41	17.53	20.63	22.86	10.53	10.14	7.55	11.06
Withdrawn	19.03	9.05	12.16	10.31	22.22	30.71	21.05	34.78	16.98	18.21
Elections Conducted	<u>70.62</u>	<u>85.97</u>	<u>82.43</u>	<u>72.16</u>	<u>57.15</u>	<u>46.43</u>	<u>68.43</u>	<u>55.08</u>	<u>75.47</u>	<u>70.73</u>
Total	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

Of the 1,010 elections, the ALRB conducted 423 (41.9 percent) in its first year. Between fiscal years 1976-77 and 1980-81, the proportion of petitions that resulted in an election decreased from approximately 86 percent to approximately 46 percent. Overall, nearly 71 percent of the petitions filed resulted in elections.

Once an election is held and ballots are counted, parties have up to five days to appeal the election results. Appeals, which are filed with the executive secretary, challenge the validity of the election results because of alleged misconduct or ineligible voters. If no appeal is filed, the board certifies the election results. If an appeal is filed but the board does not uphold it, the board also

certifies the election results. However, the board will not certify the results of the election if it upholds the appeal, that is, if it determines that misconduct did occur that affected the outcome of the election or if it determines that the statutory requirements for holding an election were not met.

The board grants two kinds of certification. One, called a "union" certification, indicates that the majority of the employees who voted chose to have a particular union represent them. A "no union" certification means that a union did not receive a majority of the votes cast.

Table 8 shows the results of elections for petitions filed during fiscal years 1975-76 through 1983-84.

TABLE 8
RESULTS OF ELECTIONS CONDUCTED FOR PETITIONS FILED
FISCAL YEARS 1975-76 THROUGH 1983-84

	NUMBER OF ELECTIONS*									Total
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	
Union Certified	273	165	104	45	23	54	14	17	16	711
"No Union" Certified	9	11	14	16	11	8	8	13	15	105
Election Not Certified	<u>141</u>	<u>14</u>	<u>4</u>	<u>9</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>5</u>	<u>2</u>	<u>183</u>
Total	<u>423</u>	<u>190</u>	<u>122</u>	<u>70</u>	<u>36</u>	<u>65</u>	<u>25</u>	<u>35</u>	<u>33</u>	<u>999**</u>

*Numbers under specific fiscal years reflect results of elections for petitions filed in that year.

**This total does not include 11 elections that were pending board ruling at the end of fiscal year 1983-84.

	PERCENT OF ELECTIONS*									Percent
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	
Union Certified	64.54	86.84	85.24	64.28	63.88	83.07	56.00	48.57	48.49	71.17
"No Union" Certified	2.13	5.79	11.48	22.86	30.56	12.31	32.00	37.14	45.45	10.51
Election Not Certified	<u>33.33</u>	<u>7.37</u>	<u>3.28</u>	<u>12.86</u>	<u>5.56</u>	<u>4.62</u>	<u>12.00</u>	<u>14.29</u>	<u>6.06</u>	<u>18.32</u>
Total	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

*Numbers under specific fiscal years reflect results of elections for petitions filed in that year.

Of the 1,010 elections that the ALRB held, the board certified 816 elections and did not certify 183 elections. The board rulings for 11 elections were pending as of June 30, 1984. Unions were chosen as collective bargaining agents, and therefore certified, in 711 elections. In the remaining 105 elections, the majority of the employees voted not to have a union represent them. For these elections, the board issued "no union" certifications. As Table 8 shows, with the exception of fiscal year 1980-81, the percentage of "no union" certifications has increased each year since fiscal year

1976-77. The percentage of elections that the board did not certify has remained at or below 15 percent, except in fiscal year 1975-76, when the board did not certify 33.3 percent of the elections resulting from petitions filed that year.

CONCLUSION

During fiscal years 1975-76 through 1983-84, the ALRB received and processed 8,545 charges alleging unfair labor practices by agricultural employees, labor organizations, or employers. The ALRB's regional office staff investigated and made initial dispositions of 7,500 of the total charges filed. The ALRB dismissed 2,891 charges (38.6 percent), the charging parties withdrew 1,428 charges (19.0 percent), and 264 charges (3.5 percent) were settled. Finally, the ALRB investigations showed that 2,917 charges (38.9 percent) were probably violations of the law and issued complaints incorporating these charges.

In the course of our review, we found that the ALRB is not adequately documenting compliance with the board decisions because it has not followed its own written procedures for documenting compliance reviews. However, the general counsel has taken action to correct these deficiencies by identifying all board decisions that require compliance review and implementing a computerized system for monitoring compliance.

Representatives of the general counsel and board are jointly developing a new compliance manual for regional offices to use. In order to assess this system for enforcing the board's decisions, we recommend that the ALRB present the results of the ALRB's compliance reviews in its annual report to the Legislature.

During fiscal years 1975-76 through 1983-84, the ALRB also received and processed 1,433 petitions for representation elections; 1,377 of the petitions filed requested union certification, and 56 petitions requested union decertification. The ALRB conducted 1,010 elections; it certified 816 of those elections and did not certify 183 of the elections. Eleven elections were pending board certification at the end of fiscal year 1983-84.

II

THE GENERAL COUNSEL'S DISCLOSURE OF INFORMATION UNDER THE PUBLIC RECORDS ACT

In November 1984, three members of the board filed a lawsuit against the general counsel over the latter's right to allow an employer's attorney access to certain investigative files. The general counsel received a request from the employer's attorney to review these files and granted the attorney's request. Several months later, after the employer's attorney had begun to review the files, three members of the board petitioned the Sacramento Superior Court to prevent the general counsel from allowing the employer's agent access to the files without the board's approval. The superior court denied the board's petition, ruling that the general counsel is empowered by statute to decide whether information in his files is confidential or privileged. In a subsequent clarification of this ruling, requested by the general counsel, the superior court reaffirmed its position in the first ruling.

On April 3, 1984, the general counsel received a written request from an agricultural employer's legal agent to review certain investigative files, pursuant to the California Public Records Act. In May 1984, the general counsel and the board met and agreed that the general counsel would have control over the files of unfair labor practice charges. They also agreed that the general counsel would

notify the board when he received a request for review of the files and before he released any documents.

In September 1984 the employer's agent reviewed certain investigative files. On November 7, 1984, the board's executive secretary sent a memorandum to the general counsel claiming that the general counsel had allowed the agent access to these files without notifying the board and that he had only cursorily reviewed the files and had not removed privileged documents.

All five members of the board expressed concern over ensuring the confidentiality of all documents identifying agricultural employees and others who provided information to the ALRB in confidence, believing that their identity would not be revealed to the employer or the employer's legal counsel. The board was also concerned because it was involved in litigation in the state appellate court with the employer whose agent reviewed the general counsel's files.

During November 1984, the general counsel and the board exchanged memorandums stating their respective positions on the release of information in this specific case. The general counsel contended that he did review some of the documents and that he did not allow the employer's agent access to four boxes of files because they contained witness declarations obtained during the investigation of the unfair labor practice charges. The general counsel also claimed that, as the

custodian of the investigative files under the California Public Records Act, he had the authority to determine which records may be released.

As a result of the continuing controversy, three members of the five-member board filed petitions with the Sacramento Superior Court on November 26, 1984, to prevent the general counsel from allowing the employer's representative further access to privileged or confidential documents in the files without approval of the board. According to the general counsel, this was the first time that the board took court action to prevent him from disclosing information. On December 3, 1984, the superior court issued a ruling that denied the board's petitions. (See Appendix A.) However, the superior court enjoined the general counsel from disclosing information that could affect the board's current litigation in the state appellate court.

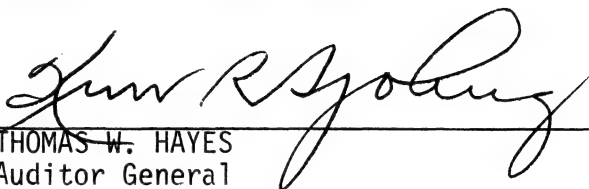
The general counsel filed a motion for clarification of the superior court ruling on December 6, 1984. One of the points that the general counsel wanted clarified was whether the general counsel's investigative files relate to or affect proceedings before the state appellate court. On February 6, 1985, the superior court issued a ruling on the general counsel's motion for clarification. (See Appendix B.) The court reaffirmed its previous ruling that denied the three board members' petition, stipulating that it was incumbent on the board to demonstrate the need for the confidentiality of a public record maintained by the general counsel. The superior court ruled

further that, by statute, the general counsel has the authority to determine whether investigative documents under his control are privileged or confidential according to the California Public Records Act or any other act.

However, the ruling did caution the general counsel to "advise the board, prior to the disclosure of any document, of his determination as to such claim of privilege, confidentiality, or exemption." In addition, the ruling stated that the general counsel must forbid the disclosure of any information that would, in his opinion, interfere with the board's proceedings in the federal appellate court. Finally, the superior court reserved jurisdiction to resolve further disputes on this matter between the board and the general counsel until after the general counsel and the board had made a "reasonable good faith effort" to resolve their differences.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


for THOMAS W. HAYES
Auditor General

Date: May 20, 1985

Staff: Gene Potter, Audit Manager
Arthur C. Longmire
Cora L. Dixon
Elaine M. Howle

Memorandum

To : Thomas W. Hayes, Auditor General

Date: May 17, 1985

File No.:

Telephone: ATSS ()

()

From : Janet Vining, ^{eh} Executive Secretary

Subject : Auditor General's Report, Entitled "The Agricultural Labor Relations Board's Administration of the Agricultural Labor Relations Act"

This is ^{1/}the Board's response to the above-captioned Auditor General's Report.

The Report contains shortcomings in two areas -- the increase in the rate of dismissals in unfair labor practice cases and the backlog of compliance cases.

Dismissals of Unfair Labor Practice Charges

Although neither the scope of the Report nor the Report itself contained an evaluation of the causes for the increase in the ALRB's rate of dismissing unfair labor practice charges, the Board notes that the increase was caused partly by a change in the General Counsel's policies. On September 16, 1983, the General Counsel issued a revision to the Agency's Unfair Labor Practice Casehandling Manual outlining a detailed procedure for obtaining and evaluating declarations filed in support of unfair labor practice charges. These changes made it more difficult for farmworkers to file unfair labor practice charges, by requiring more substantiation of charges than was previously required. In addition, the General Counsel also required that regional directors dismiss charges if appropriate declarations were not filed within 15 working days after the charge was filed.

In addition, to the extent that the Auditor General's purpose was to point out trends, the data included in the Report is insufficient, since it only includes data through fiscal year 1983-84. While current data was not available when the Auditor General reviewed the Board's records in the fall of 1984, it is now available through March of 1985. This more recent data shows an even greater increase in the percentage of unfair labor practice charges which are dismissed. To date in fiscal year 1984-85, the General Counsel has dismissed 74% of all charges he resolved.

^{1/} Chairperson James-Massengale and Member McCarthy have no comment on the Auditor General's report and do not join in this memo.

Compliance Caseload

The Auditor General's report indicates that the Board's records do not show whether the Board's orders were fully complied with. However, the Board would like to point out that it determined over a year ago which Board decisions were ready for compliance, so advised the General Counsel, and requested information concerning the status of the cases, to no avail, over several months.

Compliance cases are those in which the General Counsel and Board insure that all aspects of the Board's final remedial orders are carried out. Orders are considered final when all questions concerning liability have already been resolved, and all court appeals (even to the U.S. Supreme Court) have been exhausted. It is therefore clear that the respondent in a case, either an employer or a labor organization, has violated the Act, and all that is left to determine is the amount of money due to the employees who sustained losses because of the respondent's unlawful conduct.

In May of 1983, the Executive Secretary asked Deputy General Counsel Wayne Smith to provide the Board with quarterly reports on the status of compliance cases involving Board-ordered backpay and makewhole. The last status report the Board had received was dated December 10, 1982. Since the Deputy General Counsel was serving as Chief of Operations (the unit that published the compliance updates), the Executive Secretary requested that he continue providing such reports to the Board. No reports were received.

In September of 1983, the General Counsel appointed Ben Romo as Acting Regional Compliance Officer. However, in November of the same year, the General Counsel clarified that it was the Deputy General Counsel who would have the "responsibility of compliance" in the General Counsel's office, and that no specifications would issue until they were approved by the Deputy.

Since the General Counsel had failed to provide the Board with a report on the status of compliance cases, the Executive Secretary prepared a list of outstanding final Board orders -- that is, final Board orders which included an award of backpay and/or makewhole, but which had not yet been fully complied with. The Board was most concerned about these cases, since the affected employees were still waiting to receive the wages and benefits they had lost because of the respondents' violations of the Act. Until the employees actually received the money due them, they would not believe that the ALRB could effectively protect their rights. In the fall of 1983, the Executive Secretary gave a copy of this list to Acting Compliance Officer Ben Romo and Gail Leatherwood, who had worked in the agency's Operations unit, and who was also assigned by the General Counsel to work on compliance cases.

On March 22, 1984, the Executive Secretary sent a memo to the Deputy General Counsel, attaching another copy of the list of outstanding Board orders, and requesting information concerning what actions had been taken or were in progress to have the regional personnel issue specifications in the 30 listed cases in which no specification had yet issued. (The specification is the first pleading issued in a compliance case, and sets forth the Board's claim of how much money is owing in backpay or makewhole). The Executive Secretary also requested the timetable for issuing the specifications and an indication of what priority the cases received compared to other matters pending in the regional offices.

On April 11, the Deputy General Counsel forwarded to the Executive Secretary a copy of "the compliance report prepared by Ben Romo." That report was actually the same list the Executive Secretary had given the Deputy General Counsel, with Romo's handwritten notes concerning some of the cases. In an April 16 memo to the Deputy, the Executive Secretary pointed out the shortcomings of the "report" -- of the 30 cases in which no specification had issued, 6 were simply listed as "need update report", even though 3 of them had gone final in 1982; 2 of the cases needed to be assigned to an agent; payroll records had been requested concerning 7 of the cases, and specifications were being prepared in 2 others, but there was no indication of when the specifications were expected to issue. Anticipated dates for issuing specifications were included for 6 of the cases. In two of the cases, the respondents had gone out of business. The Executive Secretary again requested a complete report concerning when specifications would issue and what action would be taken in cases where respondents were refusing to comply with the Board's orders. Specifically, the Executive Secretary requested information as to who had overall responsibility for monitoring the status of compliance cases, the reporting method used by that person, and his or her authority to insure that compliance cases are processed as quickly as possible. Furthermore, the Executive Secretary requested that, if regional office staff was insufficient to process all the pending compliance cases in a timely fashion, the Deputy General Counsel indicate how many additional staff were needed.

By May 16, the Executive Secretary had not received a reply from the Deputy General Counsel, and sent another memo requesting the information. The same day, the Deputy responded, stating that Romo had sent the Executive Secretary a copy of his May 11 compliance report, and that report provided all the information on the progress the agency was making with compliance. On May 29, the Executive Secretary wrote back to the Deputy, noting that Romo's May 11 report did not answer any of the questions posed in her April 16 memo, nor did it offer any more detailed or recent information than the April report. The Executive Secretary listed 21 cases (12 of which had been final for over a year) for which the report contained inadequate or no information.

By sometime in July of 1984, through discussions with Ben Romo and Gail Leatherwood, the Executive Secretary was able to obtain more complete information concerning the status of the listed compliance cases. However, the most significant questions were left unanswered. The Salinas office had indicated that it did not have sufficient staff to process the cases in a timely fashion. While the other offices offered deadlines for completing specifications, they stretched well into the fall of 1984. Of the 11 cases in which anticipated dates for issuing specifications had been set, to date nothing has happened in 9 of the cases; 1 settled; and a specification issued in the last case.

The above discussion demonstrates the misleading nature of the Auditor General's statement that the General Counsel "is identifying board decisions that require compliance reviews."* Those decisions, at least to the extent they include backpay and makewhole orders, were identified more than a year ago and the General Counsel received a copy of the list. It should be noted that, whereas the final Board cases in which no specification had issued numbered 30 in March of 1984, there are currently 60 cases in which the Board's backpay or makewhole order is final, but in which the General Counsel has not issued a specification.

On September 12, 1983, the Executive Secretary suggested to the General Counsel that a committee comprised of representatives from the various sections of the agency draft the compliance manual. That proposal was rejected by the Deputy General Counsel, who indicated that the Acting Compliance Officer would be primarily responsible for drafting the manual. The Acting Compliance Officer eventually submitted to the General Counsel and the Board a draft manual. However, the manual was one that had been written a year earlier by the Chief of Operations and a high level field examiner in the Operations Unit. It was outdated, inaccurate in several areas, and included no discussion of many major subjects, including settlements and makewhole. The Acting Compliance Officer simply added a few notations in pencil to the earlier draft, and the General Counsel submitted it to the Board.

Recognizing the need to have an accurate, comprehensive and useful manual, the Board organized a committee headed by one of the Administrative Law Judges, and including staff from the Board and the Executive Secretary's Office, to draft a manual. The Acting Compliance Officer also worked with the committee. The committee has just finished an extensive rewrite of its first draft, and has presented the new draft to the Board and General Counsel.

Finally, the General Counsel has never appointed a permanent Compliance Officer, even though a Legislative committee asked why he had not done so over a year ago. Furthermore, the Acting Compliance Officer, Ben Romo, was removed from that position last month, and there currently is no Compliance Officer, temporary or permanent, working on the compliance caseload.

*Auditor General Comment: We do not believe that our statement is misleading. On page 26 of our report, we state that the board had given the General Counsel a list of outstanding final orders in 1983.

THE GENERAL COUNSEL'S DISCLOSURE OF
INFORMATION UNDER THE PUBLIC RECORDS ACT.

The Board also wishes to add the following comments, which more accurately reflect the course of this litigation, and provide an updated report concerning related litigation.

On November 26, 1984, the Board filed suit in Sacramento County Superior Court against the General Counsel to prevent him from releasing to Bruce Church, Inc. (BCI) confidential and privileged documents contained in the ALRB regional office (or "prosecutorial") files.^{2/} On that same day, the Board asked the Superior Court for a temporary restraining order prohibiting the General Counsel from releasing the regional office files while the court considered the case on its merits.

The Board's lawsuit was a response to the General Counsel's action on a Public Records Act request filed by BCI in April of 1984. Following receipt of the request, in May of 1984, the Board's Solicitor informed the General Counsel that many of the documents in the regional office files were exempt from disclosure under the Public Records Act. The Board met with the General Counsel about the request in May of 1984. At that meeting, the General Counsel agreed not to turn over any files relating to Bruce Church, Inc. without first advising the Board and the Attorney General of his intent to do so.^{3/}

2. Bruce Church, Inc. is involved in litigation against the ALRB and present and former agency employees in both state and federal court. The state court actions seek review of the Board decisions in Bruce Church, Inc. (1983) 9 ALRB No. 74 and Bruce Church, Inc. (1983) 9 ALRB No. 75, and are pending in the Court of Appeal for the Fifth Appellate District: Bruce Church, Inc. v. Agricultural Labor Relations Bd., 5 Civil No. F003587 and Agricultural Labor Relations Bd. v. Agricultural Labor Relations Bd., 5 Civil No. F003588. BCI has also filed a 42 U.S.C. section 1983 complaint against Board member Jerome Waldie and seven present and former agency employees, which is pending in United States District Court for the Eastern District of California, Bruce Church, Inc. v. Lopez et al. Civil No. 82-392-REC.

3. The General Counsel agreed to notify the Attorney General due to the Attorney General's representation of various present and former ALRB employees in litigation involving Bruce Church in federal court, Bruce Church, Inc. v. Lopez et al, United States District Court for the Eastern District of California, Case No. CV-82-392-REC.

Nonetheless, in September and November of 1984, the General Counsel permitted BCI's attorneys and two paralegals to review the regional office files relating to Case No. 79-CE-87-SAL. On November 1, 1984, when the Board discovered this, the Board requested that the General Counsel withhold from BCI confidential and privileged documents in the files. The Board was particularly concerned about protecting the identity of farm workers and others who had given information to the agency in confidence. The Board also sought to protect the attorney and investigator notes contained in the files. The Board strenuously opposed the release of files, such as those in Case No. 79-CE-87-SAL, which concern cases presently in litigation. As noted ante, the Board decision which issued in Case No. 79-CE-87-SAL is presently under review by the Court of Appeal for the Fifth Appellate District. The General Counsel refused the Board's requests. When the Board and the General Counsel were unable to resolve the issue of the extent of the Board's interest and control over the regional office files, the Board filed the aforementioned lawsuit.

On December 3, 1984, Superior Court Judge John Sapunor denied the Board's application for temporary injunctive relief on the ground that Labor Code section 1149 gives the General Counsel sole authority over agency regional office files. He did, however, enjoin the General Counsel from releasing files which relate to the litigation pending in the Fifth Appellate District. He denied the application as to those documents relating to the litigation filed in federal court against the agency by BCI. (Bruce Church, Inc. v. Lopez, et al., Case No. CV-82-392-REC.)

In response to the court's ruling, the General Counsel filed a "Motion for Clarification." On February 6, 1985, the court ruled on that motion, denying the Board's request for injunctive relief. The Court did set forth certain procedures, including notification of the Board, which the General Counsel was to follow in response to BCI's request for files. Without following those procedures, the General Counsel thereupon promptly released all of the files relating to Case No. 79-CE-87-SAL to counsel for Bruce Church, Inc. on April 5, 1985. The Board filed an appeal of the Superior Court's denial of injunctive relief with the Court of Appeal for the Third Appellate District on April 5, 1985. That appeal is pending.

In March 1985, in a similar matter, the General Counsel agreed to turn over all agency regional office files relating to J.R. Norton Co., Inc. to agents for that company after receiving a Public Records Act request from J.R. Norton. After extensive negotiations with the General Counsel to prevent disclosure of the documents had broken down, the Board filed a cross-complaint in Sacramento County Superior Court against the General Counsel: Agricultural Labor Relations Bd. v. Stirling and Smith, Case No. 320218 (The cross-complaint was filed in Norton's pending Public Records Act lawsuit against the Board and the General Counsel.)

The Board's Norton action was similar to the earlier lawsuit involving BCI; again the Superior Court denied the Board's request for temporary injunctive relief, although the Court stayed the effect of its order to give the Board an opportunity to seek relief from the appellate courts. The Board again filed an appeal with the Court of Appeal for the Third Appellate District. The Board also asked for a writ of supersedeas preventing the General Counsel from releasing the Norton files while the appellate court considered the Board's appeal. The Third Appellate District denied the request for the writ of supersedeas on April 25, 1985. The Board then filed a Petition for Writ of Mandate with the California Supreme Court seeking an order requiring the appellate court to grant the writ of supersedeas. On April 30, 1985, the Supreme Court issued a restraining order against the General Counsel prohibiting release of the Norton files while the Court considers the Board's petition for writ of mandate. (See Appendix A attached hereto.)

APR 20 1995

LAURENCE P. GILL, Clerk

No. S.F. 24878

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

AGRICULTURAL LABOR RELATIONS BOARD, Petitioner

v.

COURT OF APPEAL, THIRD APPELLATE DISTRICT, Respondent;
STIRLING, ETC., ET AL., Real Parties in InterestBIRD, C.J., DID NOT PARTICIPATE.

Pending final determination of the petition for writ of mandate filed herein, real parties in interest Dave Stirling and Wayne Smith are hereby restrained from delivering to J.R. Norton Company the original or any copy of those documents listed in exhibit E to the cross-complaint in J.R. Norton Co. v. Agricultural Labor Relations Board, Sacramento Superior Court No. 320218, and from permitting J.R. Norton Co. to examine or copy any of those documents.



Acting Chief Justice

AGRICULTURAL LABOR RELATIONS BOARD
GENERAL COUNSEL
915 Capitol Mall, Room 350
Sacramento, Ca 95814
(916) 322-7017



May 10, 1985

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:


A portion of the Auditor General's report entitled "The Agricultural Labor Relations Board's Administration of the Agricultural Labor Relations Act," includes a section, commencing at page 35, captioned "The General Counsel's Disclosure of Information Under the Public Records Act."

The General Counsel wishes to advise the Auditor General that in addition to the lawsuit filed by three Members of the Board¹ against General Counsel referred to in said captioned section, the same three Members of the Board, notwithstanding the Judge's ruling denying the said Board Members' petition, again on April 16th filed a second lawsuit against General Counsel seeking the same identical relief sought in the earlier action. Said Board Members brought this action as to a different Public Records Act request of General Counsel records, and filed said action before a different Sacramento County Superior Court Judge than the earlier action.

After a two-hour hearing, this Judge denied all relief requested by said three Board Members and refused to issue a restraining order preventing General Counsel from providing access to said records. A copy of said court order by Judge Joseph DeCristoforo is attached for the record.

This means that in both Public Records Act request actions filed by the three Board Members to prevent the General Counsel from carrying out his responsibilities under the Public Records Act, the courts have ruled against said Board Members' action as being without merit.

Respectfully submitted,


Dave Stirling
General Counsel

Attachment

1. The two other Members of the Board voted not to file suit against General Counsel with regard to his Public Records Act request responsibilities.

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ENDORSED:

Filed

APR 22 1985

JOYCE RUSSELL SMITH, CLERK
By B. STONE, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

J. R. NORTON CO.,	)	NO. 320218	DEPT. 14
)		
Plaintiff,)		
)		
vs.)		
	)	ORDER	
AGRICULTURAL LABOR RELATIONS	)	RE CROSS-COMPLAINANT'S	
BOARD, et al.,	)	REQUEST FOR TEMPORARY	
	)	RESTRAINING ORDER AND	
	)	<u>ORDER TO SHOW CAUSE</u>	
Defendants.)		
)		
)		
AGRICULTURAL LABOR RELATIONS)		
BOARD,)		
)		
Cross-Complainant,)		
)		
vs.)		
)		
DAVE STIRLING, General Counsel)		
of the Agricultural Labor)		
Relations Board, and WAYNE SMITH,)		
Deputy General Counsel of the)		
Agricultural Labor Relations)		
Board,)		
)		
)		
Defendant and)		
Cross-Defendants.)		

Cross-complainant Agricultural Labor Relations Board's
(ALRB or Board) request for a temporary restraining order and

1 an order to show cause in the above-entitled matter was heard
2 on April 18, 1985 before the Honorable Joseph A. DeCristoforo,
3 presiding over Department 14 of the Sacramento County Superior
4 Court. Cathy Christian and Nancy C. Smith appeared and argued
5 on behalf of the Board. Dave Stirling appeared and argued on
6 behalf of the defendants Dave Stirling, General Counsel of the
7 ALRB and Wayne Smith, Deputy General Counsel of the ALRB.
8 Alan J. Saxe appeared and argued as amicus on behalf of
9 plaintiff J. R. Norton Co. (Norton). Having heard argument
10 from all parties and amicus, the Court enters the following
11 order:

12 The Board's request for a temporary restraining order and
13 an order to show cause is denied on the following grounds:

14 (1) with reference to Public Records Act requests concerning
15 unfair labor practice investigation and/or prosecution files,
16 the authority to claim any exemption or privilege under the
17 Public Records Act belongs to the General Counsel of the Board,
18 pursuant to Labor Code section 1149; and (2) even if the Board
19 has some authority over the regional office and/or prosecu-
20 torial files, any privileges and/or exemptions which the ALRB
21 might claim pursuant to the Public Records Act (Government Code
22 section 6250, et seq.) or other law were waived when the
23 General Counsel, within the scope of his position as General
24 Counsel of the Board, previously allowed an attorney for J. R.
25 Norton Co. to visually inspect and review such files. Either
26 of these reasons, standing alone, would support the Court's
27 decision to deny the request for a temporary restraining order
28 and/or an order to show cause.

1 In addition, in order to give the Board time to seek
2 appellate review of this order, cross-defendant Dave Stirling
3 stipulated in open Court not to transmit any of the documents
4 at issue in this case (the ALRB regional office files which
5 concern J. R. Norton Co.) to Norton or its agents until the
6 close of the business day on April 26, 1985, and the Court
7 approves this stipulation.

8 DATED: APR 22 1985

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10 JOSEPH A. DeCRISTOFORO

11 JUDGE OF THE SUPERIOR COURT
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APPENDIX A

SUPERIOR COURT OF CALIFORNIA
RULING UPON MOTION FOR INJUNCTIVE RELIEF
AND PETITION FOR WRIT OF MANDATE

ENDORSED

DEC 3 1984

JOYCE RUSSELL SMITH, CLERK
By C.S. HOLDEN, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

11	AGRICULTURAL LABOR RELATIONS	)	NO. 325045	DEPT. 25
12	BOARD,)		
13)		
14	Plaintiff and Petitioner,)		
15)		
16	vs.)		
17)		
18	DAVE STIRLING, General Counsel of	)	RULING UPON MOTION FOR	
19	the Agricultural Labor Relations	)	INJUNCTIVE RELIEF AND	
20	Board,	)	PETITION FOR WRIT OF	
21		)	<u>MANDATE</u>	
22	Defendant and Respondent,)		
23)		
24	and)		
25)		
26	BRUCE CHURCH, INC.)		
27)		
28	Real Party in Interest,)		
)		
	and)		
)		
	UNITED FARM WORKERS OF AMERICA,)		
	AFL-CIO,)		
)		
	Real Party in Interest.)		

Upon the application of the Agricultural Labor Relations
Board (the Board) for injunctive relief and for a Writ of
Mandate, the Court now rules as follows:

////

1 The burden of demonstrating a need for the alleged con-
2 fidentiality of a public record not expressly exempted from
3 disclosure by law is upon the party claiming the privilege.
4 (Government Code section 6255.) Time constraints mandate prompt
5 action on the part of the Public Agency maintaining the public
6 record. (Government Code sections 6256; 6256.1.)

7 Having in mind the authority conferred upon the General
8 Counsel by statute, it is clear that after his review of the
9 content of any disputed file in his possession or under his con-
10 trol, he shall make a determination of the confidential, privi-
11 leged or exempt status of any matter therein asserted to be
12 confidential or privileged by the Board or alleged by it or at
13 its urging to be exempt from the purview of the California Public
14 Records Act. Such determination so made by the General Counsel
15 shall be final and binding upon the Board and Real Parties in
16 Interest.

17 However, General Counsel is enjoined from disclosing to
18 the Real Parties in Interest the content of any file now in his
19 possession or control that relates to or affects the appellate
20 proceedings involving the parties to this proceeding or related
21 proceedings now pending before the Court of Appeal, Fifth
22 Appellate District, except as that Court shall direct.

23 With regard to the matters claimed by the Board to be
24 privileged because of the proceeding pending before the United
25 States District Court for the Eastern District of California, the
26 Court denies the Board's application. As to those matters, the
27 proper resolution of the dispute is through discovery procedures
28 under the Federal Rules.

1 This Court reserves jurisdiction to resolve any further
2 disputes as to matters determined by the General Counsel in his
3 discretion as not subject to the exemptions set forth in
4 Government Code section 6254 or otherwise privileged.

5 Plaintiff-Petitioner is reminded that the confidential,
6 privileged or exempt status of the General Counsel's files is to
7 be determined by him in his discretion and any assertions of
8 confidentiality, privilege or exemption, or the absence thereof,
9 must be founded upon good cause.

10 The Petition for an Order to Show Cause directed to the
11 General Counsel is DENIED.

12 To the extent set forth above, the application for
13 injunctive relief is denied in part and granted in part.

14 The Petition for an Alternative Writ of Mandate is
15 DENIED.

16 DATED: DEC 3 1984



JOHN M. SAPUNOR

PRESIDING JUDGE - SUPERIOR COURT

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
ORDER ON MOTION FOR CLARIFICATION

ENDORSED

Filed

FEB - 6 1985

JOYCE RUSSELL SMITH, CLERK
By D.G. AHEE, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

11	AGRICULTURAL LABOR RELATIONS	)	NO. 325045	DEPT. 25
12	BOARD,)		
13	Plaintiff and)		
14	Petitioner,	)	ORDER ON MOTION FOR	
15	vs.	)	<u>CLARIFICATION</u>	
16	DAVE STIRLING, General Counsel)		
17	of the Agricultural Labor)		
18	Relations Board,)		
19	Defendant and)		
20	Respondent,)		
21	and)		
22	BRUCE CHURCH, INC.,)		
23	Real Party in Interest,)		
24	and)		
25	UNITED FARM WORKERS OF AMERICA,)		
26	AFL-CIO,)		
27	Real Party in Interest.)		

The motion of defendant and respondent's General
Counsel, Mr. Dave Stirling, for clarification of the Court's
ruling issued herein on December 3, 1984 is hereby granted on the

1 ground that the plaintiff and petitioner, Agricultural Labor
2 Relations Board (Board) has failed to comprehend the import of
3 that ruling. The Court now modifies the language of the ruling
4 to read as follows:

5 The burden of demonstrating a need for the alleged con-
6 fidentiality of a public record not expressly exempted from dis-
7 closure by law is upon the party claiming the privilege, here,
8 the Board. (Gov. Code section 6255.) Time constraints mandate
9 prompt action on the part of the Public Agency maintaining the
10 public record. (Gov. Code sections 6256; 6256.1.)

11 Because of the authority conferred upon him by statute
12 upon receipt of any request to disclose the content of any
13 investigative file or files in his possession or control related
14 to the subject proceedings, the General Counsel shall review the
15 contents of such file or files to determine, in the exercise of
16 his discretion, whether the content thereof is subject to a claim
17 of privilege, of confidentiality, or is an exception under the
18 Public Records Act, or any other act. Upon such review, the
19 General Counsel shall advise the Board, prior to disclosure of
20 any document, of his determination as to such claim of privilege,
21 confidentiality or exemption. Such determination shall be final
22 and binding on the Board and Real Parties in Interest named in
23 this proceeding.

24 In determining whether to disclose or withhold any file
25 or the contents of any file, the General Counsel shall also
26 consider and determine, in the exercise of his discretion,
27 whether disclosure of any such file or files or their contents
28 will adversely affect the position of the Board in the event that

1 the proceedings in 9 ALRB No. 74 and 9 ALRB No. 75, now pending
2 before the Court of Appeal, Fifth Appellate District, should
3 result in a reversal of the Board's decision which requires
4 rehearing of the proceeding before the Board or its hearing
5 officers. The General Counsel shall make such discretionary
6 determination considering such possible reversal, keeping in
7 mind his duty to enforce the provisions of the Act and, to the
8 extent that, in his opinion, the enforcement of the Act may be
9 adversely affected or compromised by disclosure of such file or
10 the contents thereof, he shall forbid such disclosure and thereby
11 avoid interference with any of the appellate process of the Court
12 of Appeal, Fifth Appellate District in Case 9 ALRB No. 74 or 9
13 ALRB No. 75.

14 With regard to the applicability of a claim of privilege
15 or confidentiality or of exemption from disclosure, the Court
16 reserves jurisdiction to resolve further disputes, if any, in
17 this proceeding until after the parties have first made a serious
18 and reasonable good-faith effort to resolve such dispute.

19 With regard to the matters claimed by the Board to be
20 privileged because of the proceeding pending before the United
21 States District Court for the Eastern District of California, the
22 application of the Board is DENIED. As to those matters, the
23 proper resolution of the dispute is through discovery procedures
24 under the Federal Rules.

25 Plaintiff-petitioner Board is reminded that the
26 confidential, privileged or exempt status of the General
27 Counsel's files shall be determined solely by the defendant and
28 respondent General Counsel and any assertion of confidentiality,

1 privilege or exemption asserted by the Board must be reasonable
2 and founded upon good cause.

3 The Board's Petition for an Order to Show Cause directed
4 to the General Counsel is DENIED. The Board's application for
5 injunctive relief is DENIED.

6 The Board's Petition for an Alternative Writ of Mandate
7 is DENIED.

8 DATED: FEB - 6 1965

J. M. SAPUNOR

PRESIDING JUDGE-SUPERIOR COURT

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps